



**DIRECTOR'S POLICY #100-06
SUBPOENAS, SERVICE OF PROCESS AND NOTICES**

Effective Date: July 16, 2008

Approved By: _____

I. PURPOSE: The purpose of this policy is to provide Department of Professional and Occupational Regulation employees with procedures for receiving, documenting, distributing and responding to a subpoena, process or notice. This policy shall supplement Director's Policy #100-04, Release of Information.

II. POLICY STATEMENT: The processing of all subpoenas and other notices served on the Department shall be handled in a timely and accurate manner according to the guidelines set within this policy. When notification of counsel is required, original documents shall be hand delivered to the Office of the Attorney General within one day of service on, or receipt in the Department.

III. DEFINITIONS:

Appeal	Petition a superior court to review the decision of an inferior court or administrative agency.
Long Arm Statute	A state law providing jurisdiction, via substituted service of process, over non-resident individuals or businesses licensed by the Department of Professional and Occupational Regulation.
Notice of Appeal	A document stating an intention to appeal a board case decision received by the Director (as Agency Secretary).
Petition for Appeal	A document filed with the clerk of the circuit court named in the first notice of appeal, served on the Director (Agency Secretary) and all parties involved, appealing a board case decision.
Process	A summons, writ, warrant or mandate to appear or respond in court.
Service of Process	The formal delivery of a writ, summons or other legal notice to an official authorized to accept (Director or his designee) or on the party to whom it is directed.
Subpoena	A writ commanding a person to appear at a certain time and place to give testimony on a specific matter.
Subpoena duces tecum	A court process, initiated by a party in litigation compelling production of specific documents and other items in the custody of the Department which are material or relevant to facts in issue in a pending judicial proceeding.

IV. RELATED DOCUMENTS: [Director's Policy #100-04 Release of Information](#)

V. GENERAL PROVISIONS:

A. SERVICE ON THE DIRECTOR'S OFFICE

1. All service shall be accepted by the Director's Office. Reception Desk personnel may accept service during regular business hours (8:15 a.m. to 5:00 p.m.) only when the Director's Office is closed.

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Submitted By:	Dawn Waters, Policy Planning & Public Records Director	Guidance Document:	Yes
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2. The Director's Office shall indicate the date, time, method of receipt and person receiving the document on the front page of the subpoena, process or notice.
3. The Director's Office shall immediately forward all non-personnel service to the Public Records and FOIA Manager. In the Public Records and FOIA Manager's absence, all documents shall be forwarded to the Policy, Planning and Public Records Director or the Deputy Director for Compliance and Investigations.
4. The Director's Office shall send a facsimile of all service related to personnel matters to the Office of the Attorney General and immediately deliver the document to the Human Resources Section.

B. PUBLIC RECORDS SECTION RESPONSIBILITIES

The Public Records and FOIA Manager shall review all documents served on the Department to identify those that warrant delivery to the Office of the Attorney General; determine whether testimony and/or records are required; and the appropriate individual/section to receive the service. In the absence of the Public Records and FOIA Manager, the Policy, Planning and Public Records Director or the Deputy Director for Compliance and Investigations shall perform the initial review. The Public Records Section shall maintain an electronic copy of all documents and log for tracking all service received by the Department.

1. Subpoena duces tecum
 - a. All records released in response to a subpoena duces tecum shall bear the official Department of Professional and Occupational Regulation seal.
 - b. Records released in response to a subpoena duces tecum shall be authenticated by the record custodian and the person to whom the custodian reports on the face of the documents as true copies of the original records ([§54.1-112 of the Code of Virginia](#)).
 - c. A subpoena duces tecum for information that is statutorily exempt from public disclosure under the [Virginia Freedom of Information Act](#), Title 54.1 of the *Code of Virginia* (e.g. [§54.1-108](#)) and other applicable statutes shall be handled in the following manner.
 - 1) All documents shall be copied and certified pursuant to §54.1-112 of the *Code of Virginia*.
 - 2) All "objectionable" (including FOIA exempt) documents shall be placed in a large sealed envelope. The front of the envelope shall include the style of the case; name of the court; and identification of the contents (i.e., "Documents presented to the Court by the Department of Professional and Occupational Regulation pursuant to subpoena duces tecum issued on [date] by [issuing party]").
 - 3) A transmittal letter to the Clerk of the Court with a copy to all parties and their attorneys (if represented by counsel) stating that "pursuant to §54.1-108 of the *Code of Virginia* or other applicable statute, the following enclosed exempt documents are hereby being delivered to the Court in a sealed envelope."
 - 4) A copy of the subpoena duces tecum shall be attached to the Department transmittal letter.
 - 5) All non-exempt records shall be copied, certified and delivered in accordance with the subpoena duces tecum.
 - d. Exemptions under §54.1-108 of the *Code of Virginia* do not apply to subpoenas for regulant records issued on behalf of the regulant or subpoenas for an open/active investigation files issued on behalf of the named respondent in the file.
2. Testimony
 - a. The Public Records and FOIA Manager, upon request by the subpoenaed individual, shall contact the issuing party to determine if a License Transcript or other authenticated records would be an acceptable alternative to personal testimony. The Public Records and FOIA Manager shall be responsible for obtaining the proper written releases from a subpoena if documents are accepted in lieu of the requested testimony.

- b. The person named in the subpoena is responsible for ensuring compliance with the terms of the subpoena. This includes being prepared to testify at any criminal, civil or administrative proceeding at the time and place designated on the subpoena.

3. Appeals

- a. After entering the appeal documents in the electronic database and converting the documents to electronic format, the Public Records and FOIA Manager shall arrange for hand delivery of all original copies of Notices/Petitions for Appeal to the Office of the Attorney General. A copy of the notice/petition and the OAG transmittal letter shall be forwarded to the appropriate Executive Director. Copies of Real Estate and Contractor Transaction Recovery Fund appeals shall be forwarded to the Recovery Fund Administrator in the Administrative Proceedings Section.
- b. Within two days of receiving a Notice/Petition for Appeal, the appropriate Executive Director is responsible for contacting the Office of the Attorney General and coordinating any response and appeal record preparation with board counsel. The Executive Director is responsible for preparing and certifying the appeal record according to any requirements set forth by the Office of the Attorney General and Rule 2A:3 of the *Rules of Supreme Court of Virginia*. Each Executive Director shall designate a person who shall be responsible for record preparation in their absence.

4. Long Arm Statute Compliance

- a. The Public Records and FOIA Manager shall forward all process served on the Department pursuant to Title 54.1 to the appropriate Executive Director to mail to the regulant's last known address of record.
- b. The Executive Director shall retain any undelivered documents that are returned to the Department for a period of three years.

C. IMMEDIATE REFERRAL TO THE OFFICE OF THE ATTORNEY GENERAL

- 1. The Public Records and FOIA Manager is responsible for hand delivery of original service to the Office of the Attorney General in the following situations:
 - a. Appeals of case decisions involving an applicant or licensee
 - b. Appeals of case decisions involving the Real Estate or Contractors Transaction Recovery Fund
 - c. Service on the Director pursuant to the Long Arm Statutes in Title 54.1 of the *Code of Virginia*
 - d. Any service, which names the Department, any regulatory board within the Department, any board member or any Department employee as a defendant
 - e. Service on any board member
 - f. Service or delivery of any documents, notices, petitions, etc. that call for a Department response within a specified period of time
 - g. A subpoena duces tecum for statutorily exempt information that may compromise the integrity of the Department's licensure, mediation, conciliation or investigative processes (e.g., examinations, confidential dispute resolution materials, active investigations of unlicensed activity)
 - h. A subpoena duces tecum served on the Department less than five workdays prior to the date for compliance
- 2. In situations when the time for compliance with a subpoena duces tecum issued by an attorney (pursuant to [§16.1-89](#) of the *Code of Virginia*) is less than fourteen days after service of the subpoena, and the Director deems there are grounds for objecting to the subpoena, the Policy, Planning and Public Records Director shall contact the Office of the Attorney General.
- 3. The Policy, Planning and Public Records Director shall immediately notify the Office of the Attorney General of any service received by the Department that is not covered in Sections B or C of this policy.

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